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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,807	10/02/2000	Larry W. Depoorter	D-42716-01	2936

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Cryovac Inc  
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EXAMINER

PATTERSON, MARC A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 04/09/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/446,807

Applicant(s)

DEPOORTER ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 second paragraph rejections of Claims 1 – 2, 4, 6, 10, 18 and 23, of record on page 2 of the previous Action, are withdrawn.

### REPEATED REJECTIONS

2. The 35 U.S.C. 102(b) rejection of Claims 1 – 3, 5 – 12 and 23 as being anticipated by Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 4 as being unpatentable over Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 13 as being unpatentable over Brady et al (WO96/00688) in view of Herrington (U.S. Patent No. 4,561,109), 35 U.S.C. 103(a) rejection of Claims 14 – 15, 17 and 19 – 22 as being unpatentable over Brady et al. (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and 35 U.S.C. 103(a) rejection of Claims 16 and 18 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and further in view of Shabram (U.S. Patent No. 3,340,776) of record on page 2 of the previous Action, are repeated.

### NEW REJECTIONS

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

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invention. The phrase 'a bottom' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'the bottom.'

5. Claims 2 – 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to Claim 2, the phrase 'a burst strength of at least 26 inches of water' is indefinite as inches are not a conventional unit of strength. For purposes of examination, the bag will be assumed to have any burst strength.

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'wherein the bag has an uncovered top portion' is indefinite as its meaning is unclear. For purposes of examination, the phrase will be assumed to mean 'wherein the top of the bag is uncovered.'

7. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 23 recites the limitation "a means for controlling the temperature monitors current and voltage" in line 1. There is insufficient antecedent basis for this limitation in the claim; no basis is established for an electrical heater, thus no basis is established for current or voltage.

## ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejections of Claims 1 – 2, 4, 6, 10, 18 and 23, of record on page 2 of the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new 35 U.S.C. 112 second paragraph rejections of Claims 1 – 13, 6 and 23 above are directed to amended Claims 1 – 13, 6 and 23.

Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1 – 3, 5 – 12 and 23 as being anticipated by Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 4 as being unpatentable over Brady et al (WO96/00688), 35 U.S.C. 103(a) rejection of Claim 13 as being unpatentable over Brady et al (WO96/00688) in view of Herrington (U.S. Patent No. 4,561,109), 35 U.S.C. 103(a) rejection of Claims 14 – 15, 17 and 19 – 22 as being unpatentable over Brady et al. (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and 35 U.S.C. 103(a) rejection of Claims 16 and 18 as being unpatentable over Brady et al (WO96/00688) in view of Samson (U.S. Patent No. 3,616,004) and further in view of Shabram (U.S. Patent No. 3,340,776) of record on page 2 of the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 6 of Paper No. 17, that page 19, lines 15 – 31 of Brady et al does not disclose that the patch bag shown in Figure 11 comprises a seal through both the patch and the bag which is the only seal across the bag. However, page 30, lines 8 – 13, and Figure 11, disclose that Figure 11 comprises a seal through both the patch and the bag which is the only seal

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across the bag. Furthermore, as stated on page 2 of the previous Action, it is disclosed on page 30, lines 34 – 35 and page 31, lines 1 – 7 that the seal is across the bottom.

Applicant also argues, on page 8, that the width of the bag corresponds to the length of the seal, rather than its width, therefore the width of the seal is not defined by Brady et al. However, the terms ‘length’ and ‘width’ define distances over which the seal extends, and each term is defined by either the length or width of the bag. Therefore, as stated on page 2 of the previous Action, Brady et al define both a length and width of the seal which would be obvious to one of ordinary skill in the art to vary as taught by Brady et al.

Applicant also argues, on page 10, that the combination of Brady et al and Samson is improper because Samson teaches the use of two aligned individually heated sealing jaws for sealing multilayer films in which the layers have alternating high and low melting points; Brady et al, Applicant argues, teaches the sealing of layers in which the layers have similar melting points. However, both Samson and Brady teach the sealing of multilayer films through the entire laminate. Therefore, as stated on page 2 of the previous Action, it would be obvious for one of ordinary skill in the art to provide for first and second heating bars in alignment with one another in order to seal the films with strength and uniformity as taught by Samson.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### *Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*4/1/03*